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7
8 UNITED STATES DISTRICT COURT
9 FOR THE NORTHERN DIVISION OF CALIFORNIA
10 SAN JOSE DIVISION
11
12
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14 NOEMIA CARVALHO, et al.,

Case No. C 08-1317 JF (HRL)

15 Plaintiff,

NOTICE OF MOTION TO CERTIFY
CLASS ACTION

16 vs.
17

18 CREDIT CONSULTING SERVICES, INC.
19 dba CCS, et al.,

20 Defendants.

DATE: September 26, 2008
TIME: 9:00 a.m.
DEPT.: COURTROOM 3

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22 _____/
23 PLEASE TAKE NOTICE that on September 26, 2008, or such date as the court may set,
24 at 9:00 a.m. in Courtroom 3 of the above court, located at 280 South First Street, San Jose,
25 California, Plaintiff Noemia Carvalho, individually and on behalf of all others similarly situated,
26 will make the above entitled motion.

The motion seeks an order certifying the matter as a class action. This motion will be

1 made on the ground that the complaint meets all the requirements for class certification. The
2 motion will be based upon this notice, the attached points and authorities, the attached
3 Declarations of Noemia Carvalho, Evan Hendricks and Ron Bochner, the court file in this case
4 and such other and further evidence as may be adduced at or before any hearing on the matter.
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6 August 21, 2008

LAW OFFICE OF RON BOCHNER

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9 BY _____
10 RON K. BOCHNER
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California Civil Code section 1785.31	pas.
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SUPPORT OF MOTION TO CERTIFY
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20 Defendants.
21

22 **I. BACKGROUND-CLASS ACTION ALLEGATIONS**

23 Plaintiff NOEMIA CARVALHO respectfully submits this memorandum in support of her
24 Motion for Class Certification (the "Motion") pursuant to Federal Rule of Civil Procedure 23 and
25 California Civil Code ("CC") section 1785.31(c), seeking certification of this matter as a class
26 action and Plaintiff Carvalho as class representative.

This is a consumer class action under the California Consumer Credit Reporting Agencies

Act (“CCRAA”) CC sections 1785.16, et seq. brought on behalf of all California consumers who during the two year period prior to the filing of this action to the date of judgment have been subject to violations of the CCRAA by defendants Experian Information Solutions, Inc. (“Experian”), Equifax Credit Information Services, Inc, Equifax, Inc. (“Equifax”) and Trans Union, LLC (“TU”), referred to collectively as “defendants” or the consumer credit reporting agencies (“CRAs”), as follows:

1. California consumers subject to reinvestigation procedures which do not allow for and assure review and consideration of all relevant information provided by consumers in the reinvestigation process in a manner which complies with Civil Code section 1785.16(a) and (b).

2. California consumers who did not receive an adequate notice of the right to receive and/or an adequate description of the procedure used to determine the accuracy and completeness of the disputed information compliant with Civil Code section 1785.16(d)(4).

The focus of the first concern and class are the subjugation of the class members to the use of the Consumer Dispute Verification (CDV) process as the means of fulfilling the reinvestigation process set forth by CC section 1785.16(a) and (b). Complaint paragraphs 8 and 13. As to each of the defendants, it includes the fact that none of them make an effort to convey documents provided by consumers to the furnisher of the disputed information.

The focus of the second concern and class is defendants’ failure to provide anything more than a generalized, non-fact specific response to consumer requests for a description of the procedure used to determine the accuracy or completeness of the information in dispute in violation of CC section 1785.16(d)(4). Complaint paragraphs 9, 14.

Plaintiff requests relief in the form of injunctive relief (CC section 1785.31(b)) and statutory damages (CC section 1785.31(a)(2) and (c)).

II. BACKGROUND-CREDIT REPORTING AND CREDIT REPORTING AGENCIES

In the case of negative credit reporting, defendants operate something akin to an alternate judicial system, called credit reporting, whereby information is gathered about purported consumer bad debts and is made available to credit grantors for a price. In the instance of negative credit reporting of these purported consumer debts, there are two major effects they have

1 on consumers: first, they act as non-judicial liens on future credit transactions, typically requiring
 2 payment before future credit is extended and, second, by negatively impacting credit scores,
 3 increase the cost of financing credit purchases (if they do not foreclose completely on any such
 4 extension).

5 An entity providing information to CRAs is called a furnisher. Oftentimes, as in this case,
 6 these are debt collectors, not the original purported creditors. Once furnishers report entries
 7 about consumers, the CCRAA puts the burden on the consumer to dispute entries on the report.
 8 This obligation is found at CC section 1785.16. Once the consumer makes a dispute, the CRA is
 9 obligated to “reinvestigate” the disputed information. CC section 1785.16(a). In conducting the
 10 reinvestigation, the CRA is required to review and consider all relevant information submitted by
 11 the consumer with respect to the disputed item. CC 1785.16(b). Pursuant to CC 1785.16(d)(4),
 12 upon completion of the reinvestigation, the CRA must provide a notice that, if requested by the
 13 consumer, a description of the procedure used to determine the accuracy and completeness of the
 14 information disputed will be provided to the consumer.

15 The defendant CRAs each maintain a method of reinvestigation of consumer disputes
 16 described as a consumer dispute verification (CDV), typically an automated consumer dispute
 17 verification (ACDV) system. The dispute verification system essentially uses a one page form
 18 that reduces the consumer’s dispute—no matter how lengthy or thorough or well documented-- to
 19 a generic two digit code and sometimes a one-line paraphrase of the consumer’s dispute. It then
 20 sends these forms, either by mail or fax in the case of the CDV or electronically in the case of an
 21 ACDV to the entity that furnished the information. There is nothing in the CDV system that
 22 requires or assures that any information is actually reviewed by the furnisher, or any actual
 23 investigation is performed, in responding to the dispute. In virtually no case are documents a
 24 consumer submits with his or her dispute sent to the furnisher. Indeed, the ACDV system has no
 25 capability of sending documents. To verify a debt, no explanation of the nature of the
 26 investigation or explanation of its findings are required of the furnisher by any of the credit
 reporting agencies. See Declaration of Evan Hendricks, paragraph 19-21; See *Crane v. Trans*

1 *Union*, 282 F.Supp.2d 311, 315-317 (ED Pa. 2003).

2 **III. FACTS**

3 In October of 2001, plaintiff obtained medical treatment at a facility called Bayside
4 Medical Group. While not relevant, at all times, Plaintiff was covered for treatment and all bills
5 incurred therefor by her insurer, Blue Cross of California. In March of 2003, Bayside informed
6 plaintiff that the bill had not been paid for these services. Plaintiff did some research and
7 determined that Bayside had billed Blue Shield of California instead of Blue Cross of California
8 for the medical treatment. It appears that Bayside then assigned the debt to a debt collector and
9 plaintiff began receiving debt collection notices from the debt collector. Carvalho Declaration
10 paragraph 2.

11 In approximately August of 2004, Ms. Carvalho began noticing that her credit report
12 contained an entry from the debt collector and Bayside contending she owed them money for the
13 treatment provided. Beginning in September, 2004, plaintiff complained to the debt collector and
14 each of the defendant consumer reporting agencies about this item's inclusion on her consumer
15 credit report. In doing so, she provided 15 pages of documentation showing what was disputed
16 and why and identifying, amongst, other things, the various entities involved, their addresses and
17 the phone numbers of contact people. However, the derogatory item was not removed from her
18 consumer credit report anytime before complaint was filed. True and correct copies of the
19 September, 2004 letter were produced by each of the defendants in response to discovery. See
20 Exhibit A to the Declaration of Ron Bochner, Equifax documents 5-28, Exhibit B, Experian
21 documents 1-17, Exhibit C, Trans Union documents 51-67. Carvalho Declaration, paragraph 3.

22 Discovery in this matter reveals that the CDV procedure consists of completing an
23 electronic form including a two letter code and, sometimes, one sentence interpretation of the
24 consumer's dispute. Documents reflecting these procedures were produced by defendants in
25 discovery, true and correct copies of which are attached to the Declaration of Ron Bochner as
26 Exhibit A, Equifax, Indicating Manual, Module 1, Equifax documents 156-159, 700-703;
Verification Processer Procedure Manual, Equifax documents 504-506; Equifax, Responses to

1 Special Interrogatories, Set One, Number 3 (at 4:6-25); Exhibit B, Experian, Consumer Data
 2 Industry Association, Credit Reporting Resource Guide, Experian documents 572-575;
 3 Consumer Investigation Procedures Participant Guide, Experian documents 635-6, 1003-4;
 4 Exhibit C, Trans Union, CRS2 Disclosure Training Manual, Trans Union documents 365-66:

5 “An investigation is when the consumer may write into Trans Union stating specifically
 6 what they do not agree with on their credit file. Trans Union receives their written request
 7 for a dispute and it is sent to the Dispute Department. The Dispute Department receives
 8 all correspondence concerning the consumer’s dispute that needs to be processed. A
 9 dispute investigator will determine if a certain credit company that is reporting on the
 10 consumer’s file needs to be investigated per the consumer’s request. The dispute
 11 investigator will then send out a Consumer Dispute Verification form to the credit grantor.
 12 The dispute investigators job is done.”

13 [emph. in original] Trans Union, Dispute Processing Reference Manual, Trans Union documents
 14 580-581; Trans Union response to Special Interrogatories, Set One, Number 3; Hendricks
 15 Declaration at paragraphs 19-21. It does not include conveying documents a consumer may
 16 attach to a dispute. See Equifax documents 41, 69, 70, 123, true and correct copies of which are
 17 attached as Exhibit A to the Bochner Declaration, Exhibit B, Experian documents 587-601, 1831-
 18 1837, 2070-2075, Exhibit C, Trans Union documents 83-86, 128-131, 206-208.

19 In regard to Trans Union in particular, consistent with its policy, described to plaintiff that
 20 it could not “accept” her attached documents and that such documents were “unusable” and
 21 refused to even consider the attachments. See Trans Union documents 81, 82, true and correct
 22 copies of which are attached to the Declaration of Ron Bochner as Exhibit C, This remains true,
 23 despite the fact that Trans Union’s own credit reports specifically request (and acknowledge the
 24 right to) that “[a]ny pertinent information and copies of all documents you have concerning an
 25 error should be given to the consumer reporting agency.” TU documents 122, 148, 172, 200, 226,
 26 252, true and correct copies of which are attached as Exhibit C to the Declaration of Ron
 Bochner. Trans Union’s policy is to review only a narrow band of self-proving documents
 associated with consumer disputes. TU document 627, a true and correct copy of which is
 attached as Exhibit C to the Bochner Declaration. This is in plain contravention of CC section
 1785.16(b)’s requirement that a credit reporting agency must review and consider all relevant
 information submitted by the consumer with respect to the disputed item.

Equifax confirms that it received 3,043,050 consumer dispute reinvestigation requests, or about 8,337 a day in 2006. See, Equifax Response to Special Interrogatories, Set Three, Interrogatories 3 and 4, true and correct copies of which are attached to the Declaration of Ron Bochner as Exhibit A. Experian states that the average number of consumer dispute reinvestigation requests received on a daily basis that were sent to third parties for verification in 2006 was 41,475 and that year it received 15,138,492 total such requests. See Experian's Second Supplemental Response to Plaintiff's Special Interrogatories, Set Five, Numbers 3 and 4, a true and correct copy of which is attached to the Declaration Ron Bochner as Exhibit B. Trans Union confirms that between May 1, 2006 and July 31, 2007 it received 19,030,289 tradeline disputes and performed 4,332,111 reinvestigations in 2006. See Trans Union Supplemental Responses to Special Interrogatories, Set Two, Number 1 and Supplemental Responses to Special Interrogatories, Set Three, Number 4, true and correct copies of which are attached as Exhibit C to the Declaration of Ron Bochner.

Additionally, after getting no satisfaction about her disputes, Ms. Carvalho requested, pursuant to CC section 1785.16(d)(4) a description of the procedure used to determine the accuracy or completeness of the information in dispute. See requests, Equifax documents 42-43, 76-82, Experian documents 18, 24, Trans Union documents 101, 230-3, true and correct copies of which are attached to Exhibits A, B and C, respectively. In apparent response, the defendant credit reporting agencies provided, at best, a generalized description of the reinvestigation process, instead of an explanation of the procedure actually used to make a determination of the accuracy or completeness of the information disputed. See Equifax documents 104, 118, Experian documents 86 (not clear if responsive to April 1, 2005 request, if so it was untimely) 124, 142 (not clear if responsive to March 17, 2006 request) and 2192-2195, Trans Union documents 103 (non-response), 255-260, true and correct copies of which are attached to the Declaration of Ron Bochner as Exhibits A, B and C, respectively. Defendants provide such responses as a matter of routine practice and policy. Equifax, Response to Requests for Admission, Set One, Number 1, Experian documents 2192-2195 and TU documents 723-724.

1 true and correct copies of which are attached to the Declaration of Ron Bochner as Exhibits A, B,
2 and C, respectively.

3 These descriptions simply restate the statutory requirements for reinvestigations and do
4 not attempt to explain how the individual's consumer dispute was reinvestigated in fact. Indeed,
5 in the case of Equifax and Experian, these "descriptions" automatically come *before* the
6 consumer even requests them, but instead with the results of the reinvestigation. Experian has
7 stated that it has provided the "standard paragraph explaining the investigation process to
8 consumers 1,711,566 times" between April 1, 2004 and June 1, 2007. See Experian response to
9 Special Interrogatories, Set Four, Number 4, a true and correct copy of which is attached as
10 Exhibit B to the Declaration of Ron Bochner. Trans Union does not automatically include the
11 generalized language in providing the response to the reinvestigation, but acknowledges sending
12 out 270,365 copies of its form description letter (TU 723-4) between May 1, 2005 and May 31,
13 2007. See, TU documents 723-24 and Trans Union response to Special Interrogatories, Set Two,
14 Number 2, true and correct copies of which are attached as Exhibit C to the Declaration of Ron
15 Bochner. Indeed, given their entire lack of specificity, they could come even before
16 reinvestigations are performed. This very generality and all purpose nature of the disclosure
17 shows the very lack of compliance with (d)(4) that plaintiff complains of.

18 **IV. ARGUMENT**

19 "Rule 23 must be liberally interpreted" and read to "favor maintenance of class actions."
20 *King v. Kansas City Southern Industries*, 519 F.2d 20, 25-26 (7th Cir. 1975).

21 Class actions are essential to enforce laws protecting consumers. The Supreme Court
22 confirms: Class actions serve an important function in our system of civil justice because they
23 permit plaintiffs to "vindicate the rights of individuals who otherwise might not consider it worth
24 the candle to embark on litigation in which the optimum result might be more than consumed by
25 the cost." *Deposit Guarantee v. Roper*, 445 US 326, 338 (1980). "Class actions serve an
26 important function in our system of civil justice." *Gulf Oil Co. v. Bernard*, 452 U.S. 89, 99
(1981).

In determining whether a class will be certified, the merits of the case are not examined and the substantive allegations of the complaint should be taken as true. *Eisen v. Carlisle & Jacqueline*, 417 U.S. 156, 177-78 (1974) *Blackie v. Barrack*, 524 F.2d 891, 901 (9th Cir. 1975), cert. denied, 429 U.S. 816 (1976).

Plaintiff seeks certification of a plaintiff class or classes against defendants defined as any or all of the below:

1. California consumers subject to reinvestigation procedures using the consumer dispute verification method or the automated consumer dispute verification method.
2. California consumers subject to form descriptions of the procedure used to determine the accuracy and completeness of the disputed information.

Plaintiff intends "procedures" in 1. above to specifically include:

A. a CDV method that limits the ability to review and consider all relevant information provided by the consumer in the reinvestigation process;

B. a CDV method that does not allow or require the furnisher to state how it actually investigates a consumer dispute;

C. a CDV method that does not allow for the relay of consumer dispute support documentation to the furnisher;

D. a CDV method that does not include the originating creditor or other entity assigning an account to the ultimate furnisher of the information to a CRA;

E. a reinvestigation method that exclusively relies on the furnisher to conduct the investigation and decide the validity of the disputed information; and

F. any method that purports to fulfill a credit reporting agency's duty to reinvestigate solely through the use of the CDV method of reinvestigation.

A. **Legal Standards for Determining Motion**

For a suit to be maintained as a class action under Rule 23, Plaintiffs must allege facts establishing each of the four threshold requirements of subsection (a) of the Rule, which provides:

One or more members of a class may sue or be sued as representative parties on behalf of all only if (1) the class is so numerous that joinder of all members is

1 impracticable; (2) there are questions of law or fact common to the class; (3) the
 2 claims or defenses of the representative parties are typical of the claims or
 3 defenses of the class; and (4) the representative parties will fairly and adequately
 4 protect the interests of the class.

5 Plaintiffs must also allege that this action qualifies for class treatment under at least one of
 6 the subdivisions of Rule 23(b).

7 Under Rule 23(b)(2), a class action will be appropriate where "the party opposing the
 8 class has acted or refused to act on grounds generally applicable to the class, thereby making
 9 appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a
 10 whole." Under Rule 23(b)(3), a class action will be appropriate where "the court finds that the
 11 questions of law or fact common to the members of the class predominate over any questions
 12 affecting only individual members, and that a class action is superior to other available methods
 13 for the fair and efficient adjudication of the controversy."

14 Under Rule 23(c)(4), where appropriate an action may be brought or maintained as a class
 15 action with respect to particular issues and under (c)(5) where appropriate, a class may be divided
 16 into subclasses that are each treated as a class under this rule.

17 Plaintiffs bear the initial burden of advancing reasons why a putative class action meets
 18 the requirements of Rule 23. However, Plaintiff's burden is not a heavy one. *Piel v. National*
 19 *Semiconductor Corp.*, 86 F.R.D. 357, 368 (E.D. Pa. 1980). *Anderson v. City of Albuquerque*,
 20 690 F.2d 796, 799 (10th Cir. 1982); *Paxton v. Union Nat'l Bank*, 688 F.2d 552, 562 (8th Cir.
 21 1982). Once a plaintiff has made a preliminary legal showing that the requirements of Rule 23
 22 have been met, the burden of proof is upon the defendant to demonstrate otherwise. 2 H.
 23 Newberg, *Newberg on Class Actions* (3d Ed. 1992) ("Newberg") § 7.22 at 7-74 to 7-75. The
 24 Court should resolve any doubt regarding the propriety of certification "in favor of allowing the
 25 class action," so that it will remain an effective vehicle for deterring corporate wrongdoing.
 26 *Esplin v. Hirschi*, 402 F.2d 94, 101 (10th Cir. 1968); accord, *In re Folding Cartons Antitrust*
Litigation, 75 F.R.D. 727 (N.D.Ill. 1977).

As defined, this case is precisely the type that courts have repeatedly found should be
 certified for class treatment. The class is united with respect to proof of liability and potential

injury because the claims are based on defendants' uniform policies and practices and standardized CDVs and ACDVs and uniform descriptions of the investigation performed. These uniform procedures, the improper exercise of which affected all members in the same fashion, constitute a failure to comply with the CCCRA's dual requirements: that all dispute information provided by a consumer be reviewed and considered as part of the reinvestigation process and that a consumer be given an explanation of how that purported reinvestigation was in fact performed upon request. The two policies here in dispute are designed to and do go together. Since the reinvestigation process and result do not include the consumer after the dispute is made, 1785.16(a) and (b) and (d)(4) exist to assure the process actually takes place and allows the consumer to know how in fact the dispute was "adjudicated." Here, unless the class is certified the minimal assurance of fairness the CCRAA affords consumers will not be guaranteed.

B. The Proposed Class Satisfies the Requirements of Rule 23(a)

The determinations called for by Rule 23(a) are questions addressed to the sound discretion of the district court. *Gulf Oil Co., supra* at 100. Courts have adopted a liberal construction of Rule 23. *Blackie, supra* at 901-05.

The focus is simply on whether the prerequisites of Rule 23(a) have been met. *Dawes v. The Philadelphia Gas Commission*, 421 F. Supp. 806, 813 (E.D. Pa. 1976). In determining whether an action may be maintained as a class action, the issue is "merely whether the representative plaintiffs have demonstrated the probability of the existence of a sufficient number of persons inclined and similarly situated." Moreover, since class determination is made at the pleading stage of the action, the substantive allegations in the complaint are accepted as true for purposes of the class motion. *Blackie, supra* at 901. "Courts take a common sense approach that the class is united by a common interest in determining whether a defendant's course of conduct is in its broad outlines actionable, which is not defeated by slight differences in class members' positions." *Id.* at 902-3. If any doubt exists, "any error, if there is to be one, should be committed in favor of allowing the class action." *Hoffman Elec., Inc. v. Emerson Elec. Co.*, 754 F. Supp. 1070, 1075 (W. D. Pa. 1991); *Moskowitz v. Lopp*, 128 F.R.D. 624, 628 (E.D. Pa. 1989).

1 The acts which are alleged to have occurred and, more importantly, continue to occur,
2 violate important public rights. By enacting the reinvestigation provisions of the CCRAA, the
3 legislature determined that consumers must have a reasonable, fair and thorough opportunity to
4 assure that items being reported about them and used by third persons are, in fact, accurate. This
5 requirement is doubly important as it is the sole means by which a consumer may dispute what
6 can be an entirely unfounded and inaccurate assertion about their character. The matters at issue
7 are not insubstantial: they go to basic financial credit concerns such as purchasing a home. Here,
8 as currently practiced by each of the CRAs, the reinvestigation process allows the party
9 originating the disputed information to be the sole investigator and judge of the veracity of what
10 they themselves report and oftentimes have an interest in continuing to report. Moreover there is
11 nothing that assures the furnisher will actually do any investigation at all. As the sole remedy, it
12 is clear that the reinvestigation procedures were meant to be something more than a pro forma
13 parroting back and forth of the information provided. Unfortunately, that is precisely what the
14 CDV process is. See *Crane, supra* at 315-317; *Sampson v. Equifax*, 2005 WL 2095092 (SD Ga.
15 2005).

16 Moreover, and doubly injurious to California consumers, even when the consumer
17 requests a description of how her dispute was actually investigated, she is given nothing more
18 than a boilerplate recitation of the defendants' reinvestigation duties, not what was actually done
19 in her particular case. In essence meaning that, after the consumer makes a dispute, she is left
20 entirely in the dark about how the dispute has been "adjudicated" no matter how much effort she
21 makes—unless a lawsuit and discovery procedures are initiated in a court of law. As such,
22 prosecution as a class action is appropriate and desirable.

23 Further, judicial economy requires that this action proceed through the class action
24 vehicle. The CCCRA specifically provides for class actions in the case of willful violation of any
25 of its provisions. CC section 1785.31(c). The Plaintiff and the Class members' only alternative to
26 proceeding as a class action is to file individual claims. To do so would be time consuming and
redundant, as each Plaintiff would be required to conduct discovery into Defendants' business

1 practices to prove exactly the same allegations and proffer exactly the same evidence. Each
 2 Plaintiff would then be required to brief and argue the same questions of law.

3 This action, as discussed below, meets all the requirements of Rule 23(a). This class is
 4 ascertainable by and through the fact that the use of CDVs are uniform and so too the practices
 5 and procedures used pursuant to them. The practices are similarly uniform, i.e., what the CDVs
 6 allow in terms of reflecting consumer disputes is uniform—limitation to a two word code and one
 7 sentence statement, failure to determine what a furnisher does in response to the CDV, the failure
 8 of the CDV system to allow for relaying of consumer dispute support documentation. Each of
 9 these shows a well-defined community of interest exists and common issues of fact and law
 10 predominate. The same is true for the form response to consumer requests for a description of the
 11 reinvestigation process. Further, the proposed Class Representative meets each of the applicable
 12 criteria for certification since he suffered all the delicts alleged in the complaint.

13 **1. The Class is so numerous that joinder of all members is impracticable**

14 Rule 23(a)(1) requires that the proponent of a class action demonstrate that "the class is so
 15 numerous that joinder of all members is impracticable." FRCP 23(a)(1). The Rule does not
 16 require that joinder be impossible; rather, joinder of all members is impracticable when the
 17 procedure would be "inefficient, costly, time-consuming, and probably confusing." *Harris v.*
 18 *Palm Springs Alpine Estates* 329 F.2d 909, 913-4 (9th Cir. 1964). This Court may make
 19 "common sense assumptions" in order to support the finding of numerosity. *Snider v. Upjohn*
 20 *Co.*, 115 F.R.D. 536, 539 (E.D. Pa. 1987). Moreover, it is permissible to estimate class size. *In*
 21 *re ORFA Sec. Litig.*, 654 F. Supp. 1449, 1464 (D.N.J. 1987).

22 The numerosity requirement is satisfied as long there is a reasonable basis for believing
 23 the number of class members exceeds the minimum required. It is then incumbent on the
 24 defendant to show a more accurate figure. In particular, lack of knowledge as to the exact
 25 number of class members should not be a bar to maintaining a class action where the defendants
 26 alone have access to such data. *Jackson v. Foley* 156 FRD 538 (EDNY 1994); *Ventura v. New*
York City Health 125 FRD 595, 599 (SDNY 1999); *Lewis v. Gross* 663 Fsupp 1164, 1169

(EDNY 1986). “Generally speaking, courts will find that the “numerosity” requirement has been satisfied when the class comprises 40 or more members and will find that it has not been satisfied when the class comprises 21 or fewer.” *Ansari v. NYU* 179 FRD 112, 114 (SD NY 1998); *Consolidated Rail v. Hyde Park* 47 F3d 473, 483 (2nd Cir. 1995).

Here, there is no dispute that there will be thousands, at a minimum, of each type of class member. It is without dispute that millions of consumer disputes are made nationwide to each of the defendants each year, that each employs the reinvestigation processes in dispute and that each routinely provides descriptions of the reinvestigation process in a boilerplate fashion. While defendants have steadfastly refused to provide actual numbers of California consumers subjected to these practices, the clear inference from the numbers actually provided is that there will be more than enough California consumers effected to meet the numerosity requirements. Therefore, there appears to be no issue that the numerosity element is met.

2. There are questions of law and fact common to the Class

Rule 23(a)(2) requires a showing of the existence of "questions of law or fact common to the class." FRCP (a)(2). “The Ninth Circuit construes commonality liberally.” *Schwarm v. Craighead*, 233 FRD 655, 660-61 (ED Cal. 2006), citing *Hanlon v. Chrysler*, 150 F3d 1011, 1019 (9th Cir. 1998) [“23(a)(2) has been construed permissively. All questions of fact and law need not be common to satisfy the rule. The existence of shared legal issues with divergent factual predicates is sufficient as is a common core of salient facts with disparate legal remedies.”] This “threshold of commonality is not high.” *In re School Asbestos Litig.*, 789 F.2d 996, 1010 (3rd Cir., 1986) (quoting *Jenkins v. Raymark Indus., Inc.*, 782 F.2d 468 (5th Cir. 1986), cert. denied, 479 U.S. 852 (1987)). The rule does not require that all questions be common or even that common questions predominate. *Hummel v. Brennan*, 83 F.R.D. 141, 145 (E.D. Pa. 1979). All class members need not share identical claims; “factual differences among the claims of the putative class members do not defeat certification.” *Baby Neal v. Casey*, 43 F.3d 48, 56 (3^d Cir. 1994). Indeed, a single common question is sufficient to satisfy the requirements of Rule 23(a)(2). *In re Prudential Insurance Company America Sales Practice Litigation*

1 *Agent Actions*, 148 F.3d 283, 310 (3d Cir. 1998).

2 A common question is one which "arises from 'a common nucleus of operative facts'
3 regardless of whether 'the underlying facts fluctuate over the class period and vary as to
4 individual claimants.' " *In re School Asbestos Litig.*, 104 F.R.D. 422, 429 (ED Pa. 1984). "The
5 fact that there is some factual variation among the class grievances will not defeat a class action. .
6 . . A common nucleus of operative facts is usually enough to satisfy the commonality requirement
7 of Rule 23(a)(2)." *Rosario v. Livaditis* 963 F2d 1013, 1017-8 (7th Cir. 1992).

8 Suits seeking joint relief, such as an injunction or declaratory judgment, usually present
9 "common questions" by their very nature. *Fraga v. Smith* 607 F.Supp 517, 522 (D Or 1985). A
10 lesser degree of certainty is required when the class is a 23(b)(2) class seeking injunctive or
11 declaratory relief. *Robertson v. NBA* 389 F.Supp. 867, 896-7 (SD NY 1975). *Manual for*
12 *Complex Litigation*, Third, section 30.14.

13 Courts have typically found a common nucleus of operative facts where, as in the present
14 action, the defendant engaged in standardized conduct toward putative class members. *Keele v.*
15 *Wexler*, 1998 U.S. App. LEXIS 15029 (7th Cir. 1998) (class certified in FDCPA action on behalf
16 of all Colorado residents who received debt collection letters from defendant); *Wilborn v. Dun &*
17 *Bradstreet Corporation*, 1998 U.S. Dist. LEXIS 12618 (N.D. Ill. 1998) (FDCPA class certified
18 regarding form collection letter); *West v. Costen*, 558 F. Supp. 564, (W. D. Va. 1983) (FDCPA
19 class certified regarding alleged failure to provide required "validation" notices); *Prudential,*
20 *supra*, at 309-310 (Prudential's orchestrated sales presentations, the plaintiffs' common legal
21 theories, Prudential's common defenses, and other common issues undoubtedly satisfy the
22 commonality and predominance requirements); *Chandler v. Southwest Jeep-Eagle*, 162 F.R.D.
23 302, 308 (N.D. Ill. 1995) (common nucleus of operative facts where defendants engaged in
24 standardized conduct toward members of the proposed class).

25 Moreover, it is well established that the presence of some individualized issues does not
26 overshadow the common nucleus of operative fact presented when the defendant has engaged in
standardized conduct toward the Class. *Prudential, supra* at 309-310 (individual damages do not

1 undermine predominance of common issues); *Dawes, supra* at 814 (presence of individual
 2 damage claims does not justify denial of class treatment of common issues); *Heartland*
 3 *Communications v. Sprint Communications*, 161 F.R.D. 111, 114-15 (D. Kan 1995) (minor
 4 differences in contracts signed by class members did not suffice to preclude a finding of
 5 commonality).

6 Plaintiff has alleged that each member of the proposed Class was subject to acts violative
 7 of the CCRAA and redressable as statutory violations under CC section 1785.31 from a common
 8 course of conduct. The complaint details the straightforward common nucleus of facts and
 9 resulting common questions of law and fact: the improper reinvestigation process and inadequate
 10 response to requests to detail that process. Both of these are shown by the systemic use of forms,
 11 the CDVs and the description of the reinvestigation process.

12 Each of these issues is best suited to proof and adjudication on a classwide basis, given
 13 that the issues are common as is the relief sought and the ability to determine California
 14 consumers were subject uniformly to the acts, practices and policies alleged, particularly given
 15 the clarity and legal nature of the allegations in issue and the court's ability to determine whether
 16 defendants' acts, practices and policies comply with the law.

17 As to the pertinent class and class definition, the proof of all elements is quite simple: the
 18 failure to maintain a reinvestigation procedure that complies with the CCRAA and the failure to
 19 provide a notice and/or an actual description of the reinvestigation process. As to the
 20 reinvestigation process, the CDVs themselves, and the practices and procedures of each of the
 21 defendant credit reporting agencies regarding their use, is largely the same: a two letter code is
 22 used to describe the consumer's dispute, a one sentence statement is derived from the consumer's
 23 dispute on a commonly used form. There is no room given to explain what the investigation
 24 entailed or why the result was what it was. No document the consumer provides with a dispute
 25 is conveyed to the so-called furnisher. The CDV is not sent to the actual purported creditor, but
 26 to a debt collector. As to the reinvestigation description, none of the defendant credit reporting
 agencies actually details the reinvestigation process upon request. Rather, they provide a

1 boilerplate form explanation of what the reinvestigation process is—most times, before it is even
2 requested.

3 Accordingly, the proposed class presents a well defined community of interest and
4 common issues of law and fact prevail over individual issues.

5 **3. The claims of the representative parties are typical of the claims of the Class**

6 Rule 23(a)(3) requires that the claims of the class representatives be "typical of the claims
7 . . . of the class." FRCP 23(a)(3). Rule 23(a)(3) and the adequacy of representation requirement
8 set forth in subsection (a)(4), are designed to assure that the interests of unnamed class members
9 will be adequately protected by the named class representatives. *General Telephone Co. of*
10 *Southwest v. Falcon*, 457 U.S. 147, 157 n.13 (1982); *In re School Asbestos Litig., supra*, at
11 429-30.

12 The threshold for establishing typicality is low. "Under the rule's [23's] permissive
13 standards, representative claims are "typical" if they are reasonably co-extensive with those of
14 absent class members; they need not be substantially identical." *Hanlon, supra* at 508; *CRLA v.*
15 *Legal Services*, 917 F2d 1171, 1175 (9th Cir. 1990). "Typicality refers to the nature of the claim
16 or defense of the class representative, and not the specific facts from which it arose or the relief
17 sought." *Schwarm, supra*, at 662. "Rule 23 does not require that the representative plaintiff have
18 endured precisely the same injuries that have been sustained by the class members, only that the
19 harm complained of be common to the class" *Hassine v. Jeffes*, 846 F.2d 169, 177 (3d Cir.
20 1988) (emphasis in original). The measure of whether a plaintiff's claims are typical is whether
21 the nature of plaintiff's claims, judged from both a factual and a legal perspective, are such that in
22 litigating his personal claims he can reasonably be expected to advance the interest of absent
23 class members. *General Telephone, supra* at 156-157; *CRLA, supra* at 1175. Put another way,
24 "[c]laims [are considered] typical when the 'essence' of the allegations concerning liability, and
25 not the particularities, suggest adequate representation of the interests of the proposed class
26 members." *In re School Asbestos Litig., supra* at 430; *Prudential, supra* at 311-312.

Where, as here, the Plaintiff alleges a common pattern of wrongdoing, and will present the

1 same evidence (based on the same legal theories) to support her claims and the claims of the
 2 Class members, courts have held the typicality requirement to be satisfied, notwithstanding
 3 factual variances in the position of each class member. Here, the class representative's claim is
 4 similarly situated in regards to the course of conduct that gives rise to the claims of the other class
 5 members, and her claims are based on the same legal theory. Ms. Carvalho was subject to the
 6 reinvestigation methods in dispute. Her dispute was reduced to a two letter code and a one
 7 sentence narrative. It did not include the conveyance of the documents she sent in support of her
 8 dispute to the furnishers of the disputed entry. It did not include any communication with the
 9 actual originator of the disputed information. It did not include any investigation by the
 10 defendants more than putting together and sending the CDV. It did not include any requirement
 11 that the furnisher actually investigate anything. It is apparent that these policies of
 12 "reinvestigation" are systemic and routinely used by the defendants.

13 Moreover, having been subjugated to this reinvestigation method, the defendants
 14 admittedly provided plaintiff and other members of the class nothing more than a recapitulation
 15 of their statutory duties when responding to requests for a description of how a reinvestigation
 16 was performed and do so in a pro forma manner. Hence, the consumer may face not only the
 17 routine verification of a disputed entry, but the entire failure to explain how the dispute was in
 18 fact verified. Under the authorities, no further showing is required to satisfy the requirement of
 19 typicality.

20 **4. The Plaintiffs will fairly and adequately protect the interests of the Class**

21 The requirement of Rule 23(a)(4) is met if it appears that (1) Plaintiffs' attorneys are
 22 qualified, experienced and generally able to conduct the litigation and (2) Plaintiffs' interests are
 23 not antagonistic to those of the class they seek to represent. *Lerwill v. Inflight Motion Pictures*,
 24 582 F.2d 507, 512 (9th Cir. 1978); *Prudential*, 148 F.3d at 312.

25 The existence of the elements of adequate representation are presumed and "[t]he burden
 26 is on the defendant to demonstrate that the representation will be inadequate." *In re School*
Asbestos Litig., supra at 430. As the court explained in *Cook v. Rockwell Int'l Corp.*, 151

1 F.R.D. 378, 386 (D. Colo. 1993):

2 [A]dequate representation presumptions are usually invoked in the absence of
3 contrary evidence by the party opposing the class. On the issue of no conflict with
4 the class, one of the tests for adequate representation, the presumption fairly arises
5 because of the difficulty of proving negative facts. On the issue of professional
6 competence of counsel for the class representative, the presumption fairly arises
7 that all members of the bar in good standing are competent. Finally, on the issue
8 of intent to prosecute the action vigorously, the favorable presumption arises
9 because the test involves future conduct of persons, which cannot fairly be
10 prejudged adversely.

11 If there are any doubts about adequate representation or potential conflicts,
12 they should be resolved in favor of upholding the class, subject to later possible
13 reconsideration, or subclasses might be created initially.

14 Id., (quoting **2 Newberg**, § 7.24 at pp. 7-81, 7-82).

15 Both prongs of the "adequacy" test are met here. First, Plaintiffs have retained counsel
16 highly experienced in class action litigation to prosecute their claims and those of the Class.
17 Bochner Declaration at paragraph 7. Second, the representative plaintiff will fairly and
18 adequately represent the interests of the class.

19 As to adequacy of counsel, it is properly presumed at the outset of litigation, in the
20 absence of specific proof to the contrary by the defendant. **2 Newberg on Class Actions**, section
21 3.42 at 3-220-21. Prior experience in class actions and in the substantive law area involved is not
22 required for demonstrating that class counsel will adequately represent the class. **Newberg on**
23 **Class Actions**, section 3.42 at 3-223. In any case, plaintiff's counsel has experience in complex
24 multi-plaintiff (approximately 120 plaintiffs) litigation, as well as lead counsel on two other class
25 certified cases and approximately one half dozen certification-pending cases. **Culinary**
26 **Bartender Fund v. Las Vegas Sands**, 244 F3d 1152, 1162 (9th Cir. 2001).

As to adequacy of representative, there is nothing to suggest that the representative
Plaintiff has any interest antagonistic to the vigorous pursuit of the Class claims against
Defendants. Because of the difficulty in proving the negative, it is Defendants' burden to prove
any antagonism. See **Lewis v. Curtis**, 671 F2d 779, 788 (3rd Cir., 1982). The representative
plaintiff's interests in the litigation are co-extensive with the interests of the class. She and the
class were both subject to the improper practices alleged. Ms. Carvalho has further agreed to act
as class representatives and has retained experienced counsel. This demonstrates her

1 commitment to bringing about the best possible results for the benefit of the class and thus meets
2 the adequacy requirement.

3 **C. The Conditions of Rule 23(b) Have Been Met**

4 In addition to meeting the prerequisites of Rule 23(a), an action must satisfy at least one
5 of the three conditions of subdivision (b) of Rule 23. Plaintiff proceeds here under Rule 23(b)(2)
6 and (3) which provides in pertinent part:

7 An action may be maintained as a class action if the prerequisites of subdivision
8 (a) are satisfied, and in addition:

9 (2) the party opposing the class has acted or refused to act on grounds
10 generally applicable to the class, thereby making appropriate final injunctive relief
11 or corresponding declaratory relief with respect to the class as a whole; or

12 (3) the court finds that the questions of law or fact common to the
13 members of the class predominate over any questions affecting only individual
14 members . . .

15 FRCP 23(b)(2), (3). A court may certify a class for injunctive relief under Rule 23(b)(2) and a
16 separate class for individual damages claims that meet Rule 23(b)(3). If the individual damages
17 claims do not meet Rule 23(b)(3) standards, the court may certify the Rule 23(b)(2) class alone.
18 Schwarzer, *Federal Civil Procedure Trial*, section 10:404; *Dukes v. Wal-Mart*, 509 F3d 1168,
19 1186-1188 (9th Cir. 2007).

20 **1. The Conditions of Rule 23(b)(2) Have Been Met**

21 The requirements of Rule 23(b)(2) are met where the acts alleged apply generally to the
22 class, but this does not mean that every single class member must have been injured or aggrieved
23 in the same way by the defendant's conduct. It is sufficient if defendant has adopted a pattern of
24 activity that is likely to be the same as to all members of the class. *Baby Neal, supra* at 52 and
25 63-4. The CCRAA, CC section 1785.31(b) specifically provides that "injunctive relief shall be
26 available to any consumer aggrieved by a violation or a threatened violation of this title whether
or not the consumer seeks any other remedy under this section." Injunctive relief has been
allowed in FCRA cases. See *Andrews v. Trans Union*, 7 F.Supp.2d 1056, 1084 (CD Cal. 1998)
and it does not appear that the FCRA preempts state law on the issue. *Credit Data of Arizona v.*
Arizona, 602 F.2d 195, 197 (9th Cir. 1979); *White v. First American Registry*, 2005 WL

1 1713065 *3, 4 (SD NY 2005). Plaintiffs have alleged a uniform practice and policy conducted
2 by Defendants against Plaintiffs and the Class members and seek injunctive relief therefrom.

3 2. The Conditions of Rule 23(b)(3) Have Been Met

4 In the case of a Rule 23(b)(3) certification [where damages are sought], the court looks to
5 whether questions of law or fact common to the class “predominate” over questions affecting
6 individual members and, on balance, whether a class action is superior to other methods available
7 for adjudicating the controversy.

8 a. Common Issues Predominate

9 Common issues predominate over individual issues where plaintiffs have alleged a
10 common course of conduct on the part of a defendant. *Prudential, supra* at 314-315.
11 Predominance is determined not by counting the number of common issues but by weighing their
12 significance. *Mullen v. Treasure Chest Casino*, 186 F3d 620, 627 (5th Cir. 1999). Further,
13 differences in class members’ damages generally will not prevent a finding of predominance. *In*
14 *re Visa Check/Master Money Antitrust Litigation*, 280 F3d 124 (2d Cir. 2001); *Blackie, supra* at
15 905. Where common questions predominate, a class action can achieve economies of time, effort
16 and expense as compared to separate lawsuits, permit adjudication of disputes that cannot be
17 economically litigated individually, and avoid inconsistent outcomes, because the same issue can
18 be adjudicated the same way for the entire class. If common questions do not predominate, then
19 little time or effort is saved and a class action for damages is not appropriate. *Advisory*
20 *Committee Note to Rule 23(b)(3)*, 39 FRD 102 (1966).

21 Here, the weighty issues of the propriety of the broadly and uniformly used, but facially
22 noncompliant CDVs and boilerplate descriptions of the reinvestigation provided by the CRAs
23 weigh heavily for a finding of predominance in this case. To the rare extent a CDV was not used
24 in a reinvestigation, such consumers can be excluded from the class.

25 As set forth, the damages plaintiff seeks are statutory in nature, see CC sections
26 1785.31(a)(2)(B) and 1785.31(c). There has been some issue as to how class actions are to be
handled vis-a vis “actual” damages. In *Schwarm, supra*, a Fair Debt Collection Practices Case,

1 the court certified a class of both actual and statutory damage. In *Clark v. Experian*, 2001 WL
 2 1946329 * 3, 4 (DSC 2001), the court refused to certify a Fair Credit Reporting Act (FCRA) class
 3 action because only statutory damages were sought. In *Clark v. Experian*, 2002 WL 2005709
 4 (DSC 2002), upon amendment of the complaint to include, in the alternative, an allegation that
 5 the defendants negligently violated the FCRA, * 2, the court certified the action, despite the fact
 6 that actual damages type claims were not suitable for class action, it found the statutory damage
 7 claims predominated. *4.

8 In *Murray v. GMAC*, 434 F3d 948 (7th Cir. 2007), the court provided an extended analysis
 9 explaining why class actions seeking statutory damage claims alone, despite the availability of
 10 other remedies under the FCRA, were certifiable:

11 The district court's second reason [for denial of class certification]—that Murray should
 12 have sought compensatory damages for herself and all classmembers rather than relying
 13 on the statutory-damages remedy—would make consumer class actions impossible. What
 14 each person's injury may be is a question that must be resolved one consumer at a time.
 15 Although compensatory damages may be awarded to redress negligence, while statutory
 16 damages require wilful conduct, introducing the "easier" negligence theory would
 17 preclude class treatment. Common questions no longer would predominate, and an
 18 effort to determine a million consumers' individual losses would make the suit
 19 unmanageable. Yet individual losses, if any, are likely to be small—a modest concern
 20 about privacy, a slight chance that information would leak out and lead to identity theft.
 21 That actual loss is small and hard to quantify is why statutes such as the Fair Credit
 22 Reporting Act provide for modest damages without proof of injury. Rule 23(b)(3) was
 23 designed for situations such as this, in which the potential recovery is too slight to support
 24 individual suits, but injury is substantial in the aggregate. See, e.g., *Mace v. Van Ru
 Credit Corp.*, 109 F.3d 338, 344-45 (7th Cir. 1997).

19 * * *

20 Refusing to certify a class because the plaintiff decides not to make the sort of
 21 person-specific arguments that render class treatment infeasible would throw away the
 22 benefits of consolidated treatment. Unless a district court finds that personal injuries are
 23 large in relation to statutory damages, a representative plaintiff must be allowed to forego
 24 claims for compensatory damages in order to achieve class certification. When a few class
 25 members' injuries prove to be substantial, they may opt out and litigate independently.
 26 See *Jefferson v. Ingersoll International, Inc.*, 195 F.3d 894 (7th Cir. 1999). Only when
 all or almost all of the claims are likely to be large enough to justify individual litigation
 is it wise to reject class treatment altogether. Cf. *In re Rhone-Poulenc Rorer Inc.*, 51
 F.3d 1293 (7th Cir. 1995).

25 See also *White v. E-Loan*, 2006 WL 2411420 *3 (ND Cal. 2006). *Murray's* well reasoned
 26 opinion now seems to express the state of law as seen by a large majority of courts considering
 such issues. See *In re Farmers Insurance FCRA Litigation*, 2006 WL 1042450, *7 (WD Ok

2006) [compiling cases]. However plaintiff is willing to pursue other damages if required to certify the case.

Moreover, in any case, individual damages issues should not prevent a finding of predominance. The court may certify as to liability alone. If some common issues could be dispositive, though there are also individual issues, the court may certify a class (or classes) as to the common issues alone. FRCP 23(c)(4); *Jenkins, supra* at 472. Finally, if common issues do not predominate across the entire class, subclassing may facilitate the prerequisites of Rule 23(b)(3). *Pruitt v. Allied Chemical*, 85 FRD 100, 118 (ED Va. 1980).

b. Class Action is Superior

In addition to finding the predominance of common questions, Rule 23(b)(3) also requires that the Court determine that "a class action is superior to other available methods for the fair and efficient adjudication of the controversy." It has been widely recognized that a class action is superior to other available methods--particularly, individual lawsuits--for the fair and efficient adjudication of a suit that affects a large number of persons injured by violations of consumer protection laws or common law. *Prudential, supra* at 316. Class treatment is especially appropriate for consumer claims. *Amchem Products v. Windsor*, 521 US 591, 625 (1997). Consumer class actions such as the case at bar easily satisfy the superiority requirement of Rule 23. *Lake v. First Nationwide Bank*, 156 F.R.D. 615, 626 (E.D. Pa. 1994) (public interest in seeing that rights of consumers are vindicated favors disposition of claims in a class action). In regards to the CCRAA, the legislature, apparently understanding the momentous step it was taking by allowing private entities to largely adjudicate disputed claims, specifically allowed class actions when these responsibilities were breached. See CC section 1785.31(c). It is so because it is so unlikely and unwieldy for unknowing individuals to bring lawsuits on their own for violation of the provisions at issue in this case, while on the other hand, it is so important to deter the CRAs from continuing these practices.

Rule 23(b)(3)(A)-(D) lists four factors pertinent to the decision of whether a class action is superior: the interests of the members of the class to individually control the prosecution of

1 separate actions, the extent and nature of litigation concerning the controversy already
 2 commenced by the members of the class, the desirability or lack of desirability of concentrating
 3 the litigation of the claims in the particular forum and the difficulties likely to be encountered in
 4 the management of the class action.

5 As to the first factor, the issues are simply (1) whether CDVs comport with CCRAA
 6 section 1785.16's requirements and, if not, whether the CRAs violate the CCRAA in using the
 7 CDV process in such a matter that it constitutes a statutory violation per CCRAA section
 8 1785.31(a)(2) and (c) and (2) whether the description of the reinvestigation provided to
 9 consumers by the CRAs comport with CCRAA section 1785.16(d)(4). CCRAA specifically
 10 provides for class actions irrespective of any other prerequisites at section 1785.31(c), indicated
 11 the legislature's intent that class actions were a superior method of handling claims for violations
 12 of the CCRAA. The court in *Schwarm*, supra at 664 found that "class action certifications to
 13 enforce compliance with consumer protection laws are "desirable and should be encouraged,"
 14 citing *Ballard v. Equifax*, 186 FRD 589, 600 (ED Cal. 1999).

15 As to the second and third factors, plaintiff is unaware of any pending cases, class or
 16 otherwise, specifically addressing the issue of the CDVs or descriptions compliance with the
 17 CCRAA. Even if there were, it is not clear why having a single ruling regarding the adequacy of
 18 the CRAs' procedures would make a class action inferior. It would have the efficient effect of
 19 providing a single ruling applicable to any case where the issue were the same. Plaintiff is
 20 unaware of any reason why concentrating the issues in this court would not be desirable.

21 In regard to the fourth factor, manageability, plaintiff is aware of no likely difficulties in
 22 proceeding. The parties acknowledging having records of the persons subject to the acts in
 23 dispute. Court have found that the plaintiff is not required at the certification stage of the
 24 proceedings to establish the existence and identity of class members. The issue, within the
 25 context of manageability, the issue is whether there exist sufficient means for identifying class
 26 members at the remedial stage. The identity of class members need not be ascertained before
 class certification, they need only be ascertainable. *Manual for Complex Litigation, Fourth* at

1 section 21.222. Here, the means are available in that there is no issue that the defendants have
2 records from which to identify class members. Indeed, courts have allowed notice by publication
3 to discover whether an ascertainable class exists. *Abramovitz v. Ahern*, 96 FRD 208, 213 (D Ct
4 1982).

5 **V. CONCLUSION**

6 This case meets all the requirements for class certification: There is an ascertainable class
7 and a well-defined community of interest in the litigation. Plaintiffs have demonstrated the
8 predominance of common issues of fact and law, numerosity, typicality, adequacy and
9 superiority.

10 For these reasons, plaintiffs respectfully submit the proposed class should be certified.

11
12 August _____, 2008

LAW OFFICE OF RON BOCHNER

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15 BY _____
16 RON K. BOCHNER
17 Attorney for Plaintiff Carvalho
18 and The Class
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